

## BRIG SALLY.

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LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS,  
TRANSMITTING A COPY OF THE CONCLUSIONS OF LAW AND  
FACT IN THE FRENCH SPOILIATION CASES RELATING TO THE  
BRIG SALLY AGAINST THE UNITED STATES.

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FEBRUARY 5, 1902.—Referred to the Committee on Claims and ordered to be printed.

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COURT OF CLAIMS,  
*Washington, D. C., February 4, 1902.*

SIR: Pursuant to the order of the Court of Claims, I transmit herewith the conclusions of fact and of law, and of the opinion of the court, filed under the act of January 20, 1885, in the French spoliation claims set out in the annexed findings by the court relating to the vessel brig *Sally*, Samuel Wells, master.

Respectfully,

JOHN RANDOLPH,  
*Assistant Clerk Court of Claims.*

Hon. DAVID B. HENDERSON,  
*Speaker of the House of Representatives.*

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[Court of Claims. French spoiliations. (Act of January 20, 1885, 23 Stat. L., 283.) (Decided December 2, 1901.) Vessel, brig *Sally*, Samuel Wells, master.]

No. of case.

Claimant.

2007. George G. Sill, administrator d.<sup>u</sup>b. n. of Thomas Sanford, deceased, v. The United States.

### PRELIMINARY STATEMENT.

This case was tried before the Court of Claims on the 21st day of May, 1901.

The claimant was represented by H. W. Cragin, esq., and the United States, defendants, by the Attorney-General through his assistants in the Department of Justice, Charles W. Russell, esq., with whom was Assistant Attorney-General Louis A. Pradt.

### CONCLUSIONS OF FACT.

The court, upon the evidence and after hearing the argument and considering same, with briefs of counsel on each side, determine the facts to be as follows:

I. The brig *Sally*, Samuel Wells, master, on or about October 15, 1799, sailed on a commercial voyage from New London, bound for Barbados.

While pursuing her said voyage she was captured on the high seas by the French privateer *Conquest of Italy*, the facts of said capture being set forth in the protest of the master, as follows:

"That in the English language written declaration is as follows:

"I, Samuel Wells, late master of the brig *Sally*, of Hartford, belonging to Ths.

Sandford, jur., of that city; Simon Wells, mate of said brig *Sally*, and Josiah Wells, mariner on board of said brig, do hereby declare: That we sailed with said brig *Sally* from New London on the 15th of October last, bound for the island of Barbadoes, under convoy of the United States sloop of war *Connecticut*, commanded by Moses Tryon, esq.; that at 10 p. m. on the 17th of said October in a heavy gale of wind, we, with another vessel of the convoy, parted from the sloop of war, nor could we ever afterwards fall in with the sloop of war; we continued our voyage, but, from southerly winds and calms, we had a very tedious passage, and on the 16th November, in latitude 14° 35' and longitude 57° 30', we fell in with and was captured by the French brig privateer called the *Conquest of Italy*, captain, Longois; we, the deponents, with 6 more of the *Sally's* crew, were put in the privateer and the *Sally* ordered for Guadeloupe. The privateer continued her cruise until the 25th of November, when she arrived at Guadeloupe, where we found the brig *Sally* and cargo condemned and sold. Some part of the crew were put in prison, others got liberty to work. The deponent, Saml. Wells, got passage on the sloop *Lyda* for St. Croix, and arrived here on the 29th ulto. The other two deponents took passage in the schooner *Venus* and arrived here yesterday. And now do hereby protest solemnly against said brig privateer, her owners, captain, and crew, as also all underwriters on the said brig *Sally* and cargo, for all losses and damages sustained or to be sustained by the capture and condemnation of said vessel and cargo.

"Witness our hands in St. Croix this second day of January, 1800.

"SAMUEL WELLS.

"SIMON WELLS.

"JOSIAH WELLS."

II. The *Sally* was a duly registered vessel of the United States, of 131 $\frac{3}{4}$  tons burden, built in Connecticut in 1795, and was owned by Thomas Sandford, a citizen of the United States.

III. The cargo of the *Sally* at the time of capture consisted of live stock, corn, oats, potatoes, hay, beef, pork, and poultry, but who were the owners of same does not appear.

IV. The losses of Thomas Sanford by reason of the capture of the brig *Sally*, and for which he was entitled to indemnity, are as follows:

Value of vessel.....	\$4,593.75
Freight earnings.....	2,186.62
Total loss.....	6,780.37

V. There was no insurance on the vessel or cargo.

VI. The claimant has produced letters of administration on the estate of the party he claims to represent, and has otherwise proved to the satisfaction of the court that the person of whose estate he is administrator is the same person who suffered loss through the seizure and condemnation of the brig *Sally*, as set forth in the preceding findings.

Said claim was not embraced in the convention between the United States and the Republic of France, concluded on the 30th day of April, 1803, and was not a claim growing out of the acts of France allowed and paid in whole or in part under the provisions of the treaty concluded between the United States and Spain on February 22, 1819, and was not allowed in whole or in part under the provisions of the treaty between the United States and France of the 4th of July, 1831.

The claimant, in his representative capacity, is the owner of said claim, which has never been assigned except as aforesaid, nor does it appear that said claim is owned by an insurance company.

#### CONCLUSIONS OF LAW.

The court decides as conclusions of law that said seizure and condemnation were illegal, and the owner had a valid claim of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800; that said claim was relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States, and that the claimant is entitled to the following sum from the United States: George G. Sill, administrator d. b. n. of Thomas Sanford, deceased, six thousand seven hundred and eighty dollars and thirty-seven cents (\$6,780.37).

WELDON, J., delivered the opinion of the court:

The brig *Sally*, Wells, master, on or about the 15th of August, 1799, sailed on a commercial voyage from New London, Conn., bound for Barbadoes. While pursu-

ing said voyage she was captured on the high seas by the French privateer *Conquest of Italy*. The facts of the capture are set forth in the protest of the master and two of the crew, made at St. Croix on the 2d of January, 1800. The substance of the protest is that the ship sailed as aforesaid for the island under convoy of the United States sloop of war *Connecticut*, commanded by Moses Tryon; that at 10 p. m. on the 17th of October in a heavy gale of wind the ship, with other vessels of the convoy, parted from the sloop of war and could not after that time fall in with her; that the voyage continued until the 16th of November, when the *Sally* was captured by the French privateer *Conquest of Italy*, Captain Longois; that deponents with six more of the crew were put on the privateer and ordered to Guadeloupe.

The privateer continued her cruise until the 25th of November, when she arrived at Guadeloupe, where they found the brig *Sally* and cargo condemned and sold. Some of the crew were put into prison, "others got liberty to work."

It is shown by the finding of fact that the ship belonged to Thomas Sanford; and by reason of the capture the brig *Sally* was a total loss, there being no insurance on the vessel or cargo. The value of the vessel at the time of capture was \$4,593.75; freight earnings, \$2,186.62; making a total loss of \$6,780.37. The cargo of the *Sally* at the time of capture consisted of live stock, produce, beef, pork, and poultry; but who were the owners of the same does not appear.

It is insisted by the defendants that the findings of fact do not justify a legal conclusion in favor of the claimant; that the capture and condemnation of the brig *Sally* are not shown to be illegal, and therefore they fail to establish any claim against the United States; that there is no decree of condemnation, and no reason is assigned in the evidence why such decree is not produced, and that the circumstances and facts disclosed by the protest do not establish an illegal capture upon the part of the privateer.

The ship sailed, as shown by the findings, from the port of her departure under convoy of the United States sloop of war *Connecticut*, and that convoy would have continued if it had not been for a heavy gale of wind which separated the *Sally* and other vessels from the company of the convoying ship. It is not necessary in this case to discuss or determine the legal effect upon the rights of the claimant growing out of the fact that the voyage was commenced illegally as against the right of the French vessel to examine and search the *Sally*, in order to ascertain its character and the nature of its cargo, as affecting the right of the French privateer or ship of war in the exercise of the right of search and seizure. That question is fully discussed and disposed of in the ship *Galen*, decided at the present term.

"The privateer continued her cruise until the 25th of November, when she arrived at Guadeloupe, where she found the brig *Sally* and cargo condemned." This is the only fact stated in the record to show that there were proceedings of a judicial character based upon the capture as set forth in the protest. It may be conceded, for aught that appears in the protest, that the seizure may have been legal, and it may be assumed, from the condition existing at the time of the capture, that a state of war existed between the Republic of France and the Kingdom of Great Britain, which gave to the privateers and war ships of France the right of search of all neutrals and the right of seizure founded upon such search, in case a condition on the part of the neutral existed justifying such seizure.

But conceding that the capture of the vessel was legal and proper, it was the duty of the captain of the capturing vessel to afford the captain of the *Sally* every reasonable opportunity to assert and maintain his rights in the proceedings to condemn the vessel founded upon the capture. A question very similar to the one involved in this case was decided by this court in the case of the *Good Intent* (36 C. Cls., p. —), Hazard, master, on the 15th of April, 1901, and the facts of that case and of this case being similar, the law announced in that case governs the rights of the parties in this proceeding. In the case of the *Good Intent*, the protest shows that the schooner carried an innocent cargo; that it was seized on the 28th of February, 1800; that she was carried into the port of Basse Terre, where the master and crew were imprisoned until the 7th of March, when with the crew the master was put on board a vessel bearing a flag of truce and carried to the island of St. Christopher. In that case neither party produced a decree of condemnation.

The court said: "Upon this state of facts we think it evident that if an international tribunal had been sitting at a time contemporaneous with the treaty of 1800, it would have been held that the protest made out a *prima facie* case, and that it was incumbent upon the French Government to produce a decree or other evidence to justify the seizure and explain why the master was deprived of the right of appearing before the prize court as the agent of the owners prosecuting their defence."

When the *Sally* was seized by the French privateer, the master of the *Sally* had the right to an opportunity to appear and defend the ship and its cargo against the alleged illegality of the voyage. He was denied due process of law.

It is not the seizure which confers the right of property upon a seizing vessel, but it is a judicial determination of the question of the liability of the ship founded upon such seizure. It is competent for a protest to show the circumstances of the capture, what was done with the crew, and the fact of the sale of the ship. The terms of the decree of the sale in the absence of the proper showing could not be established by the testimony of witnesses, either verbal or written, but the fact whether the ship was sold is a fact which can be shown by the allegations of the protest.

The circumstances stated in the protest, and which are uncontradicted by any other evidence in the case, establish the fact of the seizure, the disposition of the crew, and the fact of sale, and the absence of the master from the judicial proceedings, in which, it may be, the ship was condemned. We think the facts and circumstances of this case bring it clearly within the law as announced in the case of the *Good Intent*, and justify the conclusion that the claimant is entitled to a finding in his favor.

The conclusions of fact and the conclusion of law, with copy of this opinion, will be certified to Congress.

BY THE COURT.

Filed December 2, 1901.

A true copy.

Test, this 4th day of February, A. D. 1902.

[SEAL.]

JOHN RANDOLPH,  
*Assistant Clerk Court of Claims*

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